Filed 1/24/17 In re V.F. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re V.F., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. V.F., Defendant and Appellant.	A147760 (Contra Costa County Super. Ct. No. J0602308)

V.F. appeals from an order denying his request to have his DNA record expunged from the state databank after his juvenile adjudications of grand theft and attempted grand theft were reduced from felonies to misdemeanors under Penal Code section 1170.18, part of the Safe Neighborhoods and Schools Act (Proposition 47).[1] We affirm.

BACKGROUND

On March 15, 2007, in a juvenile proceeding under Welfare and Institutions Code section 602, appellant admitted allegations he had committed the felony offenses of grand theft person and attempted grand theft person. (§§ 487, subd. (c), 664.) The juvenile court declared appellant a ward of the court and, pursuant to section 296.1, ordered him to provide a DNA sample to the state databank.

[1] Further statutory references are to the Penal Code unless otherwise indicated.

In November 2014, the voters enacted Proposition 47, which reclassified certain property and drug offenses as misdemeanors and, in section 1170.18, created a procedure for individuals previously convicted of such offenses to have those convictions reduced to misdemeanors. (*In re J.C.* (2016) 246 Cal.App.4th 1462, 1469–1470 (*J.C.*).) On February 26, 2016, appellant filed a petition to have his juvenile adjudications reduced to misdemeanors pursuant to Proposition 47. He also requested expungement of his DNA records from the state DNA databank. At a hearing held on March 1, 2016, the court granted the request to reclassify the offenses as misdemeanors but denied the request to expunge the DNA record.

DISCUSSION

Appellant argues the juvenile court was obligated to expunge his DNA records in light of the reduction of his offenses to misdemeanors. The issue presented is one of statutory construction and our standard of review is de novo. (See *People v. Perkins* (2016) 244 Cal.App.4th 129, 134.)

California law requires "any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense" to provide a DNA sample so that his or her DNA profile may be included in the state databank. (§ 296, subd. (a)(1).) Subject to exceptions not relevant here (§ 296, subd. (a)(3)), juveniles who are found to have committed misdemeanors are not required to provide DNA samples. (*J.C.*, *supra*, 246 Cal.App.4th at p. 1470.)

Under section 299, subdivision (a), a person can seek expungement of his or her DNA record "if the person has no past or present offense or pending charge which qualifies that person for inclusion within the [state databank] and there otherwise is no legal basis for retaining the specimen or sample or searchable profile." In *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1227, 1230 (*Alejandro N.*), the Fourth District Court of Appeal held that a person whose felony offense has been redesignated as a misdemeanor under Proposition 47 is entitled to expungement of his or her DNA record under this provision if there is no other basis for retaining it.

At the time *Alejandro N.* was decided, section 299, subdivision (f) provided: "Notwithstanding any other [provision of] law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, or . . . pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296." (Italics added.) "The unmistakable implication of the reference to these statutes in section 299(f) is that the section was intended to prohibit trial courts, when reducing or dismissing charges *pursuant to the listed statutes,* from also expunging the DNA record given in connection with the original felony conviction." (*J.C., supra,* 246 Cal.App.4th at pp. 1473–1474, italics added.)

About two months after the *Alejandro N.* decision was issued, the governor signed a bill that, among other things, amended section 299, subdivision (f), to insert "1170.18" into the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample. (Stats. 2015, ch. 487 (A.B. 1492).) Thus, section 299, subdivision (f) now provides, "Notwithstanding any other law, including Sections 17, *1170.18*, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] if a person . . . was adjudicated a ward of the court by a trier of fact of a qualifying offense. . . ."[2] (Italics added.)

In *J.C., supra*, 246 Cal.App.4th at page 1475, the court concluded the purpose of this amendment to section 299, subdivision (f) was clear: "[B]y inserting a reference to section 1170.18 in section 299(f), the Legislature has prohibited the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor pursuant to section 1170.18." The court held that the amendment, effective January 1,

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[2] The primary purpose of the bill was to respond to *People v. Buza* (2014) 231 Cal.App.4th 1446 [180 Cal.Rptr.3d 753], review granted Feb. 18, 2015, S223698, which found the statutory requirement of DNA sampling upon arrest to violate the state constitution. (*J.C., supra,* 226 Cal.App.4th at pp. 1471–1472.) The aspect of the bill amending section 299, subdivision (f), to add a reference to section 1170.18 is not explained in the bill's legislative history. (*Id.* at p. 1472.)

2016, was a clarification of existing law and did not implicate the rule that statutory amendments ordinarily may not be applied retroactively. (*Id*. at pp. 1475–1482.)

Two additional published opinions have reached the same conclusion as the court in *J.C.* (*In re C.H.* (2016) 2 Cal.App.5th 1139, 1143–1151 [206 Cal.Rptr.3d 775], review granted Nov. 16, 2016, S237762; *In re C.B.* (2016) 2 Cal.App.5th 1112, 1117–1128 [206 Cal.Rptr.3d 785], review granted Nov. 9, 2016, S237801; but see *C.B.*, at pp. 1128–1138 (Pollak, J., dissenting).) We find the reasoning of these cases to be persuasive. (See Cal. Rules of Court, rule 8.1115(e) [cases pending on review may be cited for persuasive value].)

Because the amendment to section 299, subdivision (f) applies to appellant's case and precludes the expungement of his DNA record based on the reduction of his felony theft offenses to misdemeanors under Proposition 47, the trial court's order denying expungement was correct.

III. DISPOSITION

The juvenile court's order denying appellant's request for expungement of his DNA record is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.